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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/627,146	07/27/2000	ROBERT A. MOSS	MOSS-1	1215

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EXAMINER

CHAMBERS, MICHAEL S

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 11/29/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/627,146

Applicant(s)

MOSS ET AL

Examiner

M. Chambers

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on Oct 16, 2001

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-63 is/are pending in the application

4a) Of the above, claim(s) 47-58 is/are withdrawn from consideration

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-46 and 59-63 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5

20) ☐ Other: \_\_\_\_\_

***DETAILED ACTION***

This Office Action is a response to the Application filed on:

Number	Name	Date	Claims	Independent Claims
09627146	MOSS ET AL	7/27/00	63	3

***DETAILED ACTION***

1. Applicant's election of Group I, claims 1-46, 59-63 in Paper No. 7 is acknowledged.

Claims 47-58 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Note: It appears the 1449 paper supplied with the IDS filed 7/27/00 has become separated from the application. Please provide a duplicate 1449 form when responding to this action.

***Drawings***

2. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the spring claimed in claim 33 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

***Specification***

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "ball and socket" used in line 3 is indefinite and vague. It is unclear from

the claim language and the specification what is being claimed. One of ordinary skill in the art would not be able to clearly define the metes and bounds of the invention.

5. Claim 30 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "cylinder-and-socket" used in line 3 is indefinite and vague. It is unclear from the claim language and the specification what is being claimed. One of ordinary skill in the art would not be able to clearly define the metes and bounds of the invention.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-15, 25, 32-34, are rejected under 35 U.S.C. 103(a) as being unpatentable over Freese in view of Schall. Freese discloses the elements in claim 1. However Freese fails to disclose a hinge to permit the rigid member to rotate about a substantially horizontal axis. Schall discloses a hinge (1, 9). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the hinge of Schall with the apparatus of Freese in order to more precisely control the ball when struck and make the apparatus more enjoyable to use. One of ordinary skill in the art would have been aware of various functionally equivalent attachment means and would have selected an appropriate attachment means.

As to claim 2: Freese discloses a rigid member (74).

As to claim 3: Freese discloses a vertical support structure (44).

As to claim 4, 5: The rigid member of Freese would have a weight less than the weight of the ball mounting assembly and ball. And the center of gravity would be below the rigid member's second end (fig 4).

As to claim 6: Schall discloses a hinge secured to a frame (9). It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the hinge of Schall with the device of Freese in order to make the device more lively and enjoyable when used.

As to claims 7: Freese discloses a horizontal support structure (48).

As to claim 8: Freese discloses a vertical support structure (44).

As to claim 9: Freese discloses a base (22).

As to claim 10: Freese discloses a plurality of legs (20, 16).

As to claim 11: Freese discloses collapsible of legs (24).

As to claims 12, 13: Freese discloses a vertical telescopic support with an adjustable height (46).

As to claims 14, 15: No criticality is granted for the adjustability of the horizontal support. The use of adjustable telescopic supports is well known in the art. It would have been obvious to employ a telescopic support to permit adjustment of the device.

As to claim 25: Freese discloses an adjustable length (fig 4).

As to claim 32: Freese discloses a hinge (fig 2).

As to claim 33: Freese discloses a hinge which permits rotation a substantially horizontal axis (fig 2).

As to claims 34, as well as understood: No criticality is granted for using a hook. The use of a hook to attach members is well known in the art. It would have been obvious to employ a hook to facilitate the removal of the device.

As to claim 35: Freese discloses a hinge (fig 2).

7. Claims 16-22, 36-39,63 are rejected under 35 U.S.C. 103(a) as obvious over Freese in view of Schall as applied to claim 1 above and further view of Garver. Freese fails to disclose a releasable ball. Garver discloses a releasable ball (21,23). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the ball of Garver with the apparatus of Freese in order to permit the player to hit balls to a fellow player.

As to claim 17: Freese discloses a rope (14).

As to claim 18,19,20: Garver discloses a hook and loop fastener member (21, 23). It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the hook and loop fastener of Garver with the device of Freese in order to permit the device to be more enjoyable when used.

As to claims 21, 22: No criticality is granted for the shape of the hook and loop fastener area as this is a design choice. The use of hook and loop material is well known in the art.

As to claim 36: Freese discloses a ball mounting device (fig 2).

As to claim 37: Garver discloses a ball mounting device with a releasable mounting means for the ball (fig 2). No criticality is granted for using a plurality of shafts. It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the hook and loop fastener of Garver with the device of Freese in order to permit the device to be more enjoyable when used.

The use of a variety of equivalent support means for a ball practice devices is well known. One of ordinary skill in the art would have selected any one of several equivalent means.

As to claims 38, 39: Garver discloses a releasable mounting fastener (21,23). It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the releasable mounting fastener of Garver with the device of Freese in order to permit the device to be more enjoyable when used.

As to claim 63: Garver discloses a hook and loop fastener member (21, 23). It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the releasable mounting fastener of Garver with the device of Freese in order to permit the device to be more enjoyable when used.

8. Claim 23 is rejected under 35 U.S.C. 103(a) as obvious over Freese in view of Schall and Garver as applied to claim 19 above and further view of Setten. Garver fails to disclose a releasable ball with a piercing and pierceable half. Setten disclose a releasable ball with a piercing and pierceable half (2:35-46). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the attachment means of Setten with the apparatus of Garver in order to produce a less costly device. The use of various attachment means is well known in the art and this is a design choice. If the applicant believes this is a non-obvious feature, they should discuss this feature in the reply.

9. Claim 24 is rejected under 35 U.S.C. 103(a) as obvious over Freese in view of Schall and Garver as applied to claim 19 above and further view of Fraser et al. Garver fails to disclose a suction cup to hold the ball. Fraser et al disclose a suction cup to hold the ball (42). It would

have been obvious to one of ordinary skill in the art at the time of the invention to have employed the attachment means of Fraser et al with the apparatus of Garver in order to better hold the ball on the device. The use of various attachment means is well known in the art and this is a design choice. If the applicant believes this is a non-obvious feature, they should discuss this feature in the reply.

10. Claims 26-31 as well as understood are rejected under 35 U.S.C. 103(a) as obvious over Freese in view of Schall as applied to claim 1 above and further view of Culpepper. Freese fails to disclose a rigid member that is a rod. Culpepper discloses a rod (13). It would have been obvious to one of ordinary skill in the art at the time of the invention to have selected the rod of Culpepper with the apparatus of Freese in order to better position the ball to the player. The use of various attachment means is well known in the art and this is a design choice. If the applicant believes this is a non-obvious feature, they should discuss this feature in the reply..

As to claims 27: No criticality is granted for covering the rigid member with a soft material. The use of an elastomeric covering over a rigid member is well known in the art. If the applicant believes this is a non-obvious feature, they should discuss this feature in the reply.

As to claims 28-31 as well as understood: Culpepper discloses an upper elongated portion and a lower portion capable of movement that is independent from the upper portion (13,25,23). One of ordinary skill in the art would have selected an appropriate equivalent fastener.

As to claims 31: No criticality is granted for using a hook. The use of a hook to attach members is well known in the art. If the applicant believes this is a non-obvious feature, they should



discuss this feature in the reply.

11. Claims 40- 46 are rejected under 35 U.S.C. 103(a) as obvious over Freese in view of Schall as applied to claim 1 above and further view of Myers. Freese fails to disclose a tether suspended from said second end of said rigid member. Myers discloses a tether (16,45,20). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the tether of Myers with the apparatus of Freese in order to make the ball more lively during play. The use of various attachment means is well known in the art and this is a design choice. If the applicant believes this is a non-obvious feature, they should discuss this feature in the reply..

As to claim 41: Myers discloses an adjustable tether (16,22). It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the adjustable tether of Myers with the device of Freese in order to permit the device to be more enjoyable when used.

As to claims 42, 43: No criticality is granted for the type of tether used. The use of elastic and non-elastic strings is well known in the art.

As to claim 44-46: Myers discloses a ball mounting device (21). It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the ball mounting device of Myers with the device of Freese in order to permit the device to be more enjoyable when used.

12. Claims 59-60, 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freese in view of Schall. Freese discloses the elements in claim 59. However Freese fails to disclose a hinge to permit the rigid member to rotate about a substantially horizontal axis. Schall discloses a hinge (1, 9). It would have been obvious to one of ordinary skill in the art at the time of the

invention to have employed the hinge of Schall with the apparatus of Freese in order to more precisely control the ball when struck and make the apparatus more enjoyable to use. One of ordinary skill in the art would have been aware of various functionally equivalent attachment means and would have selected an appropriate attachment means.

As to claim 60: Freese discloses a member which rotates in a substantially vertical plane (58,74).

As to claim 62: Freese discloses a member which rotates in a substantially vertical plane (58,74).

13. Claim 61 is rejected under 35 U.S.C. 103(a) as obvious over Freese in view of Schall as applied to claim 60 above and further view of Culpepper. Freese fails to disclose a rigid member that is a rod. Culpepper discloses a rod (13). It would have been obvious to one of ordinary skill in the art at the time of the invention to have selected the rod of Culpepper with the apparatus of Freese in order to better position the ball to the player. The use of various attachment means is well known in the art and this is a design choice. If the applicant believes this is a non-obvious feature, they should discuss this feature in the reply..

Note: It appears to the examiner that the claimed invention is a combination of various well known features of ball practice devices. It is suggested that the novelty of the invention be discussed when responding to this office action. One of ordinary skill in the art would have been aware of all aspects of the instant invention. It is not clear what in the instant invention and claim language would make this a patentable invention.

### ***Conclusion***

The prior art made of record and relied upon.

Patent Number	Date	Patent Name	Notes
5273277	12/28/93	Freese	
2323624	7/6/43	Schall	
3861679	1/21/75	Culpepper	
3623725	1/31/68	Setten	
5746667	5/5/98	Fraser et al	
3529823	9/22/70	Garver	
3893669	7/8/75	Myers	

**NOTE:**


**1) If Applicant believes they have not received all of the cited references noted in this office action, they should call the examiner listed below within one (1) week of receiving this notice in order to obtain duplicate material and reset the time frame of this office action. If the applicant fails to request additional materials in a timely manner, the requested materials will be resent, but the applicant will have to obtain a time extension in the normal fashion.**

**2) Unless claims are noted on the office action summary page and this document as allowable, all claims are rejected. 3) If a typing error creates a some confusion in this action, the examiner apologizes for the error and requests the examiner be contacted to resolve the question.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Chambers whose telephone number is (703) 306-5516. The examiner can normally be reached on Mon.-Fri. from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell, can be reached on (703) 308-2126. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302--After final fax number-- (703) 872-9303.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1078.

  
Paul T. Sewell  
Supervisory Patent Examiner  
Group 3700

Attachment for PTO-948 (Rev. 03/01, or earlier)  
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a)

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.